



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 20, 1996

Ms. Joanne Wright
Associate General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Bldg.
125 East 11th Street
Austin, Texas 78701-2483

OR96-1499

Dear Ms. Wright:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 32953.

The Texas Department of Transportation (the "department") received a request for the following:

maintenance records or trouble reports for the intersection of F.M. 1431 and Adrian Way just west of Jonestown in Travis County, Texas. Also, please provide any maintenance records or trouble reports for the ditch and highway right-of-way adjacent to this intersection and extending one mile on either side of the intersection. Please confine this search to records dated from 12-1-92 to 4-1-95.

You contend that the department has a reasonable expectation of being sued and, therefore, you seek to withhold the information pursuant to section 552.103(a) of the Government Code.¹

¹Because the requestor should have been provided an accident report already, we need not address the accident report submitted to this office. We assume that the accident report was provided to the requestor and is not at issue here.

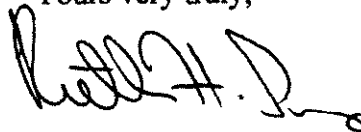
To secure the protection of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. Under Open Records Decision No. 638 (1996), a governmental body may establish that litigation is reasonably anticipated by showing that (1) it has received a claim letter from an allegedly injured party or his attorney and (2) the governmental body states that the letter complies with the notice of claim provisions of the Texas Tort Claims Act ("TTCA"). Open Records Decision No. 638 (1996).

You have submitted to this office a notice of claim letter from an attorney who represents the injured party. Because your request for a decision from this office was made prior to the issuance of Open Records Decision No. 638 (1996), this office will assume that you are representing that the notice letter you received satisfies the requirements of the TTCA. See Open Records Decision No. 638 (1996). We have reviewed the records, and our review shows that they relate to the anticipated litigation. Thus, the department has met its burden of showing that litigation is reasonably anticipated and the information at issue may be withheld pursuant to section 552.103(a).²

We note that the applicability of section 552.103(a) ends if the other parties to the anticipated litigation obtain the information or when the litigation concludes. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 (1982) at 3, 349 (1982) at 2. We also note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, Open Records Decision No. 542 (1990) at 4, the department could choose to release the information at this time. Gov't Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

²We also note that if in the future you assert that section 552.103(a) is applicable on the basis of the department's receipt of a notice of claim letter, you should affirmatively represent to this office that the letter complies with the requirements of the TTCA.

RHS/SAB/rho

Ref.: ID# 32953

Enclosures: Open Records Decision No 638 (1996)
Submitted documents

cc: Mr. Bob Grove
Grove and Ehlinger
1601 Rio Grande, Suite 343
Austin, Texas 78701
(w/o submitted documents)